

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES H. GORBEY, JR.,)
Administrator of the)
Estate of Marissa Rose)
Fishman, Deceased,)
)
 Plaintiff,)
) C.A. No. 05-211 KAJ
v.) JURY TRIAL DEMANDED
)
RICHARD LONGWILL, BARBARA)
LONGWILL, AIR BASE CARPET)
MART, INC., d/b/a Air Base)
Distributing, Inc., d/b/a)
Air Base Carpet Mart, AIR)
BASE DISTRIBUTING, INC.,)
ASHLAND CONSTRUCTION)
COMPANY, INC., JOSEPH)
RIZZO & SONS CONSTRUCTION)
VINCENT RIZZO CONSTRUCTION)
CO., INC., d/b/a Ashland)
Construction Co., Inc.,)
JOSEPH V. RIZZO, VINCENT)
RIZZO,)
)
 Defendants.)

Deposition of BARBARA H. LONGWILL, taken pursuant to notice at the law offices of Murphy, Spadaro & Landon, 1011 Centre Road, Suite 210, Wilmington, Delaware, beginning at 1:20 p.m. on Tuesday, March 7, 2006, before Heather M. Triozzi, Registered Professional Reporter, Certified Shorthand Reporter, and Notary Public.

1 that the incident occurred at 10:13. I'm not so
2 sure about the reporting time frame.

3 BY MR. LANDON:

4 Q. I'm showing you the initial crime report,
5 Page 1. This is what I'm referring to, where it
6 says reported date and time, Friday, 8/30/2002,
7 10:21.

8 Then over here the block that says
9 occurred Friday 8/30/2002, 10:13.

10 You see where I'm referring?

11 A. I -- I really don't understand what that
12 means.

13 Q. Okay.

14 A. I have no idea what that means.

15 Q. I guess, let me ask it this way.

16 A. There may --

17 Q. Let me ask it this way: When Marissa was
18 discovered by her mother, Rochelle, in the pool,
19 do you know what time that was?

20 A. No, I do not.

21 Q. Okay. Do you have any reason to dispute
22 that it was, roughly, give -- and I'm saying give
23 or take five or ten minutes, roughly, at 10:13 in
24 the morning?

1 In other words, sometime between 10
2 o'clock and 10:20 in the morning?

3 And if you don't remember, that's
4 fine.

5 A. I don't remember.

6 Q. Okay. Do you have any memory as to what
7 time it was the last time that you saw Marissa,
8 you know, up and about, walking in the house that
9 morning?

10 A. I believe that she -- you know, she --
11 Richard left and kissed her good-bye. And
12 that's --

13 Q. Is that the last time you remember seeing
14 her?

15 A. Mm-hmm.

16 Q. And you think that was around 9:00 or
17 9:15?

18 A. Possible. I don't know.

19 Q. Okay. Why don't you tell me as much as
20 you remember about the morning from the time that
21 you got up until the time that Marissa was found
22 in the pool.

23 A. Well, I got up and went -- I was preparing
24 dinner for 27. And I had my -- you know, people

1 coming in the kitchen.

2 I had -- so we were cleaning up the
3 kitchen. And, you know, there's one sink, so you
4 have to get everything together with the one
5 sink.

6 And then I had -- I was expecting,
7 you know, with the company, I thought -- my
8 daughter-in-law's family had come in for our
9 grandson's birth the night before.

10 And I had invited them over. And I
11 also told them to come earlier to come swimming.

12 And there was a lot of construction
13 going on at the house. And there were going to
14 be a lot of people.

15 So I -- I went -- I went over. I
16 saw Vinnie in the backyard. And I remembered I
17 had one table that had a lot of plants on it, and
18 I asked him if he could remove the plants and
19 bring the table into the pool room.

20 I opened up the slider to the --
21 from the den dining to the outside to tell him to
22 come in. And I unlocked the pool door, and I
23 showed him by hand, you know, I want the table
24 over here.

1 It's not a very big area. The door
2 is right here, and the space -- this is where the
3 space is for any tables. And they already had a
4 picnic table there.

5 So I told him, you know, to put it
6 there. And as I've done -- I've had the pool,
7 like, 23 years. I closed the door, and he went
8 out.

9 I didn't lock it. I didn't lock the
10 slider to the house, either.

11 And then I don't remember -- he
12 asked -- whether he asked at that time, Do you
13 want me to bring in some chairs then or if he
14 asked me later. I really don't know. I don't
15 recall that.

16 And at first I told him no. And
17 then, he is a very nice person, and he kept
18 insisting, "No problem. No problem. You know,
19 we'll do the chairs."

20 And I said, "Okay", and I went back
21 to the kitchen. And the next thing I knew is I
22 heard Alexandra, you know, scream, "Who left the
23 door open?"

24 "Where's Marissa? Who left the door

1 open?" And Rochelle screaming. And that's it.

2 Q. Okay. I'm going to go back through what
3 you told me and ask you some more questions about
4 it.

5 A. Oh, I will add that Vinnie, you know, did
6 tell me he was bringing the table into the pool
7 room. And, you know, and I said, Okay, you know.
8 That's it.

9 Q. All right. Other than what you've
10 described about talking to Vinnie Rizzo about the
11 table, did you spend the rest of the morning
12 hours from the time that your husband left until
13 the time that Marissa was discovered in the pool
14 in the kitchen --

15 A. Yes.

16 Q. -- working?

17 A. Yes.

18 Q. Was there any period of time where you
19 left the kitchen for any period of time for any
20 reason to go to any other area of the house?

21 A. Huh?

22 Q. Do you recall whether anyone was with you
23 in the kitchen during that time frame from the
24 time that your husband left until Marissa was

1 discovered?

2 A. No.

3 Q. You just don't remember?

4 A. No, I don't remember. No, I don't
5 remember.

6 Q. Okay. Do you remember where any of the
7 other adults were in the house during that time
8 frame?

9 A. My mother-in-law was in her room, and I
10 believe Alison was in her room. And the other
11 people -- the other family members were, I
12 believe, in the back.

13 Q. Okay. So is it your best recollection
14 that there was no one with you, working with you
15 or with you in the kitchen?

16 A. I was working alone.

17 Q. Okay. And what time were the other family
18 members supposed to come over to swim in the
19 pool?

20 A. I left it open. It would have been after
21 lunch, you know, before dinner.

22 Q. Okay. Sometime in the afternoon?

23 A. You know, in the afternoon. I would say
24 three o'clock or --

1 Q. Okay. And what specifically were you
2 doing in the kitchen?

3 Were you cooking?

4 A. Yes. I do all my own cooking.

5 Q. Does the sink -- if you're standing
6 working at the sink, do you look through the
7 opening into the dining area?

8 A. Yes.

9 Q. Do you recall where the other three
10 children were during the period of time from when
11 your husband left to until when Marissa was
12 discovered?

13 A. I would say they were with their mother.

14 Q. Okay.

15 A. Her sister was here. That was a very
16 special time.

17 Q. So you don't recall anybody being in the
18 dining area at all?

19 A. No.

20 Q. Did everyone get up and have breakfast
21 together, by any chance, or not?

22 A. No, they don't.

23 Q. Okay.

24 A. No. Everybody has their own schedule.

1 Q. So I want to make sure I'm clear. You
2 don't have any memory of seeing anybody else who
3 was living there in the house at that time?

4 You don't recall seeing any of those
5 people from the time that your husband left at
6 9:00 or 9:15 until Marissa was discovered in the
7 pool; is that accurate?

8 A. I would say that's accurate.

9 Q. Okay. Do you have any recollection,
10 taking that same time period again, and if we
11 can, just for the sake of argument, since you've
12 testified that your husband left around 9:00 or
13 9:15, and the police report says 10:13 for the
14 time of the occurrence, if we can use that hour
15 and 15 minute window of time or hour and 13
16 minute window of time.

17 During that window of time, do you
18 have a recollection of ever noticing whether or
19 not the interior door from the dining area to the
20 pool area was open or closed?

21 A. The interior door to the pool area, if it
22 would have been open, I would have closed it,
23 because that's what I do.

24 Q. If you had noticed that it was open, you

1 would have closed it?

2 A. Correct.

3 Q. My question is a little bit different than
4 that. I'm trying to figure out whether you
5 remember actually looking at that door while you
6 were working in the kitchen.

7 A. I don't remember.

8 Q. Okay.

9 A. It's my habit, but I don't remember, to
10 look at the door. But I don't remember.

11 Q. Okay. Now, how long after your husband
12 left did you speak with Vinnie Rizzo the first
13 time?

14 A. I don't remember.

15 Q. What did the table look like that you
16 asked him to bring into the pool area?

17 A. It's a round fiberglass table.

18 Q. Okay. Is it white?

19 A. Pardon?

20 Q. Is it white?

21 A. It's white. Cream colored.

22 Q. And it was sitting somewhere out on the
23 patio?

24 A. They were rebuilding the patio. I don't

1 know where it was sitting.

2 I mean, it was sitting somewhere.

3 Q. Somewhere outside?

4 A. Yes.

5 Q. And it had plants on top of it?

6 A. Yes.

7 Q. Like potted plants?

8 A. Yeah. It possibly was sitting in the
9 sukkot.

10 Q. In the what?

11 A. The -- I don't know. It's an arbor.

12 It was like an arbor.

13 Q. Do you recall whether Mr. Rizzo -- well,
14 do you recall how long Mr. Rizzo had actually
15 been present at your home that morning before you
16 talked to him?

17 A. No.

18 Q. Okay. Did you have to go outside to talk
19 to him?

20 A. No. I just opened the door.

21 Q. What was he doing when you opened the
22 door?

23 A. Probably working, laying some pavers, and
24 preparing this patio.

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1 Q. Okay. Was anybody working with him?

2 A. Yes.

3 Q. Who?

4 A. I don't know his name.

5 Q. Hispanic gentleman?

6 A. Mm-hmm.

7 Q. Did you ask Mr. Rizzo to do anything to
8 the table other than take the plants off it and
9 bring it in?

10 A. No, I did not.

11 Q. Okay. You didn't ask him to clean it?

12 A. I don't remember asking him to clean it.
13 But I -- you know, I assume if he was going to
14 bring it in, he would have cleaned it, I guess.

15 Q. Okay. You haven't read his deposition
16 transcript?

17 A. Pardon?

18 Q. Have you read his deposition transcript?

19 A. No, I have not.

20 Q. Have you read any accounts of what he has
21 said happened that morning?

22 A. I don't remember doing so. No.

23 Q. Okay. Did you ever talk to him after the
24 fact about how or why it had happened?

1 A. No. My heart was broken.

2 Q. Do you blame him for what happened?

3 MR. HART: I'm going to object to
4 the question, but you can answer.

5 BY MR. LANDON:

6 Q. Do you blame Mr. Rizzo for what happened?

7 MR. HART: I'll object.

8 THE WITNESS: I -- I can't answer.

9 BY MR. LANDON:

10 Q. Okay. I don't want to push this real
11 hard, but what do you mean by that, you can't
12 answer?

13 You just don't want to answer?

14 MR. HART: I'm going to -- she's
15 answered the question. She said she can't
16 answer.

17 BY MR. LANDON:

18 Q. Why can't you answer?

19 A. I can't -- I can't answer. To me, it's
20 like an act of God.

21 I can't answer.

22 Q. When you asked Mr. Rizzo to bring the
23 table in, did he -- and you've described how you
24 stood in the dining area. Did you actually open

1 the door to the pool enclosure?

2 A. Yeah. I opened it slightly to, you know,
3 just to point.

4 Q. Okay. And where was he when you were
5 doing that?

6 Did he come inside and stand in the
7 dining room?

8 A. He was behind me. I believe he was behind
9 me.

10 I don't remember exactly, but I
11 believe he was behind me.

12 Q. In the dining area?

13 A. Mm-hmm.

14 Q. Yes?

15 A. Yes. Okay.

16 I'm sorry.

17 Q. And what did you say to him? I just want
18 you to put it down here?

19 A. Yeah, just put it over here.

20 Q. Just pointed to where you wanted it?

21 A. Right.

22 Q. Do you have any idea where Marissa was at
23 that moment?

24 A. No, I do not.

1 Q. You had to unbolt the door and unlock the
2 handle latch?

3 A. Yes, I did.

4 Q. I take it that conversation couldn't have
5 lasted more than a few seconds.

6 A. Correct.

7 Q. You then closed that door?

8 A. As normally, closed the door after I
9 opened it. I know I did not bolt it.

10 Q. Okay.

11 A. But I know that I -- I feel like I closed
12 it.

13 Q. Okay. You feel like you closed it?

14 A. That's what I've been doing for 23 years
15 is --

16 Q. I understand.

17 A. -- I open it and close it.

18 Q. I understand. Again, I'm just trying
19 to --

20 A. It was -- the door at that time was
21 extremely heavy. There was weight from the roof,
22 and that was the reason I didn't bolt it.

23 So I just pushed it closed.

24 Q. Okay. So it was difficult for you to push

1 closed?

2 A. Mm-hmm.

3 Q. Yes?

4 A. Yeah.

5 Q. Did you lock the handle lock when you
6 pushed it closed?

7 A. No.

8 Q. What did Mr. Rizzo do after you told him
9 where to put the table?

10 A. He went back outside, and I guess did
11 whatever he was supposed to do. I didn't follow
12 what he was doing.

13 Q. When he went back outside, did anyone
14 close the outside door to the dining room?

15 A. Yes. I closed it.

16 Q. Okay.

17 A. It wasn't locked, because this way they
18 could come in and out.

19 Q. Okay. Did you actually see him bring the
20 table in?

21 A. That's something I really don't recollect.
22 I believe I -- you know, it's like people, you
23 know, you keep hearing it, so you -- I cannot
24 tell you.

1 I believe I saw him carrying it in
2 telling me, you know, I brought it in. And --

3 Q. You just don't have a very good --

4 A. No, I do not.

5 Q. -- recollection of that?

6 A. No, I do not.

7 Q. After he walked back out onto the patio
8 area and you closed the door behind him, what did
9 you do next?

10 A. I went back to the kitchen.

11 Q. Okay. And did you stay there until you
12 heard Alexandra screaming or --

13 A. That's correct.

14 Q. Okay. And was the table in the pool
15 enclosure area at the time Marissa was found in
16 the pool?

17 A. I assume she was. I wasn't --

18 Q. Your recollection, whatever you remember.

19 MR. HART: Don't assume anything.

20 THE WITNESS: Okay. I don't
21 remember.

22 BY MR. LANDON:

23 Q. Okay. And you have no recollection of
24 seeing, while you were back in the kitchen

1 working again -- after you showed Mr. Rizzo where
2 to put the table, he walks out. You close the
3 door behind him. You go back to the kitchen.

4 From that point until Marissa was
5 found in the pool, do you remember seeing anybody
6 move the table and or any chairs into the pool
7 enclosure area?

8 A. He -- I know -- I have to say that, yes,
9 that, you know, that they came in, put -- put the
10 table in. But I don't remember seeing the table
11 in the pool room.

12 So I don't know whether it's -- for
13 whatever reason, I don't remember that.

14 But I do recall him, you know,
15 saying that he's going to bring the table in, and
16 he's already put the table in, something like
17 that.

18 Q. Okay. So you have a vague memory of him,
19 of a second meeting with Mr. Rizzo that morning
20 where he told you he had already put the table
21 in?

22 A. Correct.

23 Q. Do you remember when that was compared to
24 the first meeting with Mr. Rizzo when you were

1 showing him where to put it?

2 A. When I was showing him; no, I do not.

3 Q. You don't even remember if it was within
4 the next minute, or two, or five, or whether it
5 was 30 or 40 minutes later? You have no way,
6 just no recollection of that?

7 A. No, I do not.

8 Q. Did you have to give Mr. Rizzo any
9 cleaning items to clean the table or the chairs?

10 A. I do not recollect.

11 Q. How many actual meetings or encounters do
12 you recall having with Mr. Rizzo that morning
13 before Marissa was found in the pool?

14 You've talked about two so far. Was
15 it just two?

16 A. Those are the only two I recall.

17 Q. And was the second time where you vaguely
18 recall him saying he had already put the table
19 in, was that when you recall him asking you if
20 you wanted him to also bring some chairs in?

21 A. I don't recall. It -- I don't recall.

22 Q. Okay. Do you have any recollection of
23 talking to him about chairs the first time that
24 you met him?

1 A. No, I did -- I did not talk to him about
2 chairs the first time.

3 Q. Well, earlier you mentioned that you do
4 have some recollection of Mr. Rizzo bringing up
5 the topic of bringing in some chairs.

6 A. Yes.

7 Q. And you at first said, no, you don't --
8 you know, I don't need you to do that. But then
9 you changed your mind and said, That would be
10 fine.

11 A. He might have asked me again.

12 Q. Okay. And do you know whether any chairs
13 were brought into the pool enclosure area before
14 Marissa was found in the pool?

15 A. They must have been, because I saw
16 pictures of the chairs in there. But I don't
17 recall.

18 Q. Okay. Was there more than one type of
19 chair?

20 How many different types of chairs
21 were there outside that morning before you spoke
22 to Mr. Rizzo for the first time?

23 A. There was only -- I believe there was only
24 one type of chair.

1 Q. What did it look like?

2 A. They're the rod iron with the plastic
3 strips, the cast aluminum. They're actually
4 brown Jordan chairs.

5 I've had them for a hundred years or
6 more.

7 Q. Okay. Did you also have some opaque white
8 or light-colored plastic chairs?

9 A. Yes. I -- I -- yes.

10 Q. Okay. Were those chairs -- that morning
11 before you spoke to Mr. Rizzo, were the white
12 opaque plastic chairs outside somewhere, or were
13 they inside the pool enclosure?

14 A. I believe they were inside the pool.

15 Q. Okay.

16 A. That I don't recollect. I believe they
17 were, but I believe they were inside.

18 Q. Is it your belief that Mr. Rizzo, at some
19 point that morning, brought all the chairs that
20 were outside inside and put them in the pool
21 enclosure?

22 A. I -- I didn't bring them in.

23 Q. Okay.

24 A. So I -- I mean, he must have done it.

1 Q. Were there any chairs still outside in the
2 patio area after Marissa was found in the pool?

3 A. I don't recall. I mean, there were -- I
4 don't recall.

5 Q. How many of the chairs that you've
6 described that you've owned forever that are the
7 rod iron with the however you described them --

8 MR. HART: Plastic strips.

9 BY MR. LANDON:

10 Q. Plastic strips across them, how many of
11 those chairs did you have at the house at that
12 time?

13 A. I had two lounge chairs, which they were
14 never -- I would never ask them to put that in
15 the pool. And I believe I have a total of four,
16 but I don't know.

17 We went outside today to look at
18 them, so I believe there are four. I don't know.

19 If I -- possibly three were brought
20 in is what I know from the pictures that we see.

21 MR. LANDON: Off the record.

22 MR. HART: Roger, while you're doing
23 that, can I just maybe clear something up for
24 your sake.

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1 You were asked earlier about if you
2 looked at anything in preparation. You talked
3 about what's been marked Barbara Longwill 1. Did
4 you also look at some photographs?

5 THE WITNESS: Yes, I did.

6 MR. HART: Okay.

7 BY MR. LANDON:

8 Q. I'm going to show you a photocopy of two
9 photographs that were previously marked to
10 Mr. Rizzo's deposition as Rizzo Number 9 and ask
11 you if you've ever seen those two photographs
12 before.

13 A. Yeah. Those are my chairs.

14 Q. Okay.

15 A. Is that what you asked me, my chairs?

16 Q. Well, I'm going to ask you some questions
17 about it, but you've seen those two photographs
18 before?

19 A. Actually I don't remember if I saw this
20 one.

21 MR. HART: No, we did not look at
22 that.

23 THE WITNESS: I did not see that
24 one. No.

1 BY MR. LANDON:

2 Q. Okay. Looking at the top photograph in
3 that exhibit, do you see the chair with the arrow
4 to the left?

5 A. Yes.

6 Q. It's circled. Now, that's the chair that
7 I was referring to earlier as the white opaque
8 plastic chair.

9 MR. LESSNER: Which picture are you
10 on?

11 MR. LANDON: I think it's Rizzo
12 Number 9.

13 BY MR. LANDON:

14 Q. Did you have a number of those white
15 plastic chairs?

16 A. Yes.

17 Q. Do you recall how many you had?

18 A. Probably had about six.

19 Q. Six. Were any of those chairs outside on
20 the patio that morning before you asked Mr. Rizzo
21 to do any work?

22 A. I don't recall.

23 Q. Okay. You see the other chairs that are
24 circled in the right-hand side of that top

1 picture?

2 A. Mm-hmm.

3 Q. Yes?

4 A. Yes.

5 Q. Are those the chairs that you referred to
6 earlier that are rod iron that you've had for a
7 hundred years?

8 A. Yes.

9 Q. Okay. And you believe you had a total of
10 four of those types of chairs?

11 A. Well, yeah. I had another one that
12 swiveled.

13 Q. Okay. And it's your belief that Mr. Rizzo
14 brought those chairs in that day at some point in
15 time?

16 A. I believe so. I -- I don't remember.

17 Q. Okay. I'm going to show you two
18 photographs, which were previously marked as
19 Rizzo Exhibit Number 7.

20 Have you seen those two photographs
21 before?

22 A. I can't -- I can't say that for sure. I
23 don't know.

24 I don't remember which photos I saw.

1 Q. Okay. Do you see the round table in the
2 photographs?

3 A. Yes.

4 Q. Is that the table that you asked Mr. Rizzo
5 to take the plants off and bring into the pool
6 area?

7 A. Correct.

8 Q. Is that table -- oh, I'm sorry.

9 A. Go ahead.

10 Q. Is that table placed in the area where you
11 directed Mr. Rizzo to place it when he brought it
12 in?

13 A. Yeah.

14 Q. Okay. Do you see in those photographs
15 there are also a number of the opaque white
16 plastic chairs?

17 A. What was that?

18 Q. Do you see --

19 A. Here?

20 Q. -- those photographs?

21 A. Yeah.

22 Q. There are several white plastic chairs.

23 A. Yes.

24 Q. I'll represent to you that Mr. Rizzo has

1 testified that those are the chairs that either
2 he and or his helper brought in to the pool at
3 some point that morning. Is it --

4 A. I don't remember.

5 Q. You don't remember?

6 A. I really don't remember.

7 Q. It could have been one type or the other
8 type, you just don't remember?

9 A. I really don't remember.

10 Q. All right. Thank you.

11 Do you know whether the rod iron
12 chairs were capable of being stacked one on top
13 of the other?

14 A. No, they were not.

15 Q. They were not.

16 You talked earlier about a picnic
17 table, and I don't remember whether you told me
18 that was in the pool enclosure area that morning
19 or outside. Do you recall where it was?

20 A. I don't recall.

21 Q. And I take it -- do you know how many
22 actual trips Mr. Rizzo and or his helper had to
23 make to get the table and the chairs into the
24 pool area that day?